IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Customs Application No. 2 of 2001

The Commissioner of Customs
(Import), Mumbai .. Applicant
V/s.
R.B. Jodhamal & Co. Ltd., Jammu .. Respondent

Ms. S.V. Bharucha with Mr. H.V. Mehta for the Applicant
None present for the Respondent

CORAM : S. RADHAKRISHNAN &
J.H. BHATIA, JJ.
DATED : 29.06.2005.

P.C.:-

1. Heard the learned counsel for the Applicant. None appears for the Respondent, though served. Affidavit of service dated 10.3.2005 is taken on record. The substantial question of law raised in the above Application reads as under:-

> i. Whether on the facts and in the circumstances of the case the Tribunal was right in law in deciding the issue of unjust enrichment on captive consumption by following the decision of the Hon'ble Bombay High Court in the case of Solar Pesticides 1992 (57) ELT 201 even though the Revenue was in appeal against the decision before the Hon'ble Supreme Court and which issue has finally been decided in favour of the Revenue by the Hon'ble Supreme Court 2000 (116) ELT 401 dated 4.2.2000 reversing the decision of the Hon'ble Bombay High Court?

2. The learned counsel for the Applicant pointed out that the order passed by Customs, Excise & Gold (Control) Appellate Tribunal is solely based on a judgment of our High Court in **M/s. Solar Pesticides v. Union of India 1992 (57) E.L.T. 201.** The learned counsel for the Applicant further pointed out that the

aforesaid judgment of the Bombay High Court has been overruled by Supreme Court by a judgment in **Union of India v. M/s. Solar Pesticides 2000 (116) E.L.T. 401 (S.C.),** and it has very clearly held that the principles of unjust enrichment applies to the case of captive consumption also, and in view thereof, the Supreme Court was pleased to hold that the view of the Bombay High Court in **Solar Pesticides v. Union of India** (supra) was incorrect.

3. In the aforesaid facts and circumstances, we direct the Appellate Tribunal to refer the above question of law to this Court after setting out all the statements of facts.

(S. RADHAKRISHNAN, J.)

(J.H. BHATIA, J.)